

JUDGE HOLLY B. BROWN DEPARTMENT 1

GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

2019 SEP 30 AM 9:17

FILED

BY *DA* DEPUTY

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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

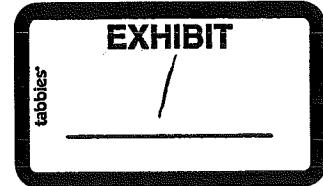
* * * * *

9 TAMMY FRIEDLUND,) Cause No. DV-16-740A
10 Plaintiff,) SUMMONS
11 vs.)
12 MOUNTAIN WEST FARM BUREAU MUTUAL)
13 INSURANCE CO., a foreign corp.,)
14 CUNNINGHAM LINDSEY U.S., INC., a)
15 a foreign corp., ABC Corps.,)
16 ABC LLCs, and JOHN DOES 1-10,)
17 Defendants.)
18)
19)

THE STATE OF MONTANA SENDS GREETINGS TO:

18 Cunningham Lindsey U.S., Inc.
19 26 W. Sixth Ave.
20 Helena, MT 59624

21 YOU, DEFENDANT, ARE HEREBY SUMMONED to answer Plaintiff's
22 Complaint and Jury Demand in the above-entitled cause, which is
23 filed in the office of the above-named Court, a copy of which is
24 herewith served upon you, and to file your answer and serve a
25 copy thereof upon Plaintiff's attorney within twenty-one (21)
26 days after the service of this Summons, exclusive of the day of
27 service; and in case of your failure to appear or answer,
28 judgment may be taken against you by default, for the relief
demanded in the Petition.



JUDGE HOLLY B. BROWN
DEPARTMENT

GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

1 Thomas J. Karem, Esq.
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7 MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

8 * * * * *

9 TAMMY FRIEDLUND,) Cause No. DV-16-740A
10 Plaintiff,) SUMMONS
11 vs.)
12 MOUNTAIN WEST FARM BUREAU MUTUAL)
INSURANCE CO., a foreign corp.,)
13 CUNNINGHAM LINDSEY U.S., INC., a)
a foreign corp., ABC Corps.,)
14 ABC LLCs, and JOHN DOES 1-10,)
15 Defendants.)
16)

17 THE STATE OF MONTANA SENDS GREETINGS TO:

18 Mountain West Farm Bureau Mutual Insurance Company
502 S. 19th Ave., Ste. 307
19 Bozeman, MT 59718

20 YOU, DEFENDANT, ARE HEREBY SUMMONED to answer Plaintiff's
21 Complaint and Jury Demand in the above-entitled cause, which is
22 filed in the office of the above-named Court, a copy of which is
23 herewith served upon you, and to file your answer and serve a
24 copy thereof upon Plaintiff's attorney within twenty-one (21)
25 days after the service of this Summons, exclusive of the day of
26 service; and in case of your failure to appear or answer,
27 judgment may be taken against you by default, for the relief
28 demanded in the Petition.

GIVEN under my hand this 12 day of July, 2019, at the hour
of 10:55 o'clock, A.m.

JENNIFER BRANDON,
Clerk of District Court

1 Thomas J. Karem, Esq.
2 **Karem Law Firm, P.C.**
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4 P.O. Box 682
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5 Attorney for Plaintiff

GALLATIN COUNTY CLERK
OF DISTRICT COURT
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BY

DEPUTY

7 MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

8 * * * * *

9 TAMMY FRIEDLUND,) Cause No. DV-16-740A
10 Plaintiff,) COMPLAINT AND JURY
11 vs.) DEMAND
12 MOUNTAIN WEST FARM BUREAU MUTUAL)
13 INSURANCE CO., a foreign corp.,)
14 CUNNINGHAM LINDSEY U.S., INC., a)
15 a foreign corp., ABC Corps.,)
16 ABC LLCs, and JOHN DOES 1-10,)
17 Defendants.)
18)
19)
20)

COPY

17 COMES NOW, Plaintiff, Tammy Friedlund, by and through
18 counsel, and states, for her complaint against Defendants, as
19 follows:

20 PARTIES

21 1. Plaintiff, Tammy Friedlund ("Plaintiff" or "Friedlund") is a
22 Montana resident residing in Gallatin County, Montana.
23 2. Defendant, Mountain West Farm Bureau Mutual Insurance
24 Company ("Defendant MWFB" or "MWFB"), is a Montana
25 registered foreign corporation, with a principal business
26 address of 931 Boulder Dr., Laramie, Wyoming 82070, and
27 whose Montana registered agent address is 502 S. 19th Ave.,
28 Ste. 307, Bozeman, Montana 59718.

1 3. Defendant Cunningham Lindsey U.S., Inc. ("Defendant
2 Cunningham Lindsey" or "Cunningham Lindsey"), is a Montana
3 registered foreign corporation, with a principal business
4 address of 405 State Hiway 121 Bypass, Lewisville, Texas
5 75067, and whose registered agent address is 26 W. Sixth
6 Ave., Helena, Montana 59624-1691.

7 **JURISDICTION AND VENUE**

8 4. The Court has original jurisdiction over this action
9 pursuant to § 3-5-302(b)-(c), M.C.A.
10 5. The Court has personal jurisdiction over the parties because
11 Plaintiff is a resident of Gallatin County, Montana;
12 Defendants transact business in Montana, enter into
13 contracts for services and/or materials in Montana, and
14 committed acts resulting in accrual of claims in Montana.
15 6. Venue is proper because Plaintiff resides in Gallatin
16 County, Defendants are not residents of Montana, and/or
17 Defendants committed acts that accrued in Gallatin County,
18 Montana.

19 **COMMON ALLEGATIONS**

20 7. Defendant MWFB's primary business purpose is selling
21 liability, life, and accident insurance in Montana.
22 8. On or about November 18, 2013, Defendant MWFB employed
23 Plaintiff as a claims adjuster for claims covered by
24 insurance policies sold by MWFB.
25 9. Defendant Cunningham Lindsey's primary business purpose,
26 relevant here, is providing third-party claims adjustment
27 for clients in Montana. Cunningham Lindsey does not sell
28 insurance.

1 10. On or about June 1, 2015, Defendant Cunningham Lindsey
2 employed Plaintiff as a part-time independent claims
3 adjuster.

4 11. On or about October 9, 2015, Defendant Cunningham Lindsey
5 terminated Plaintiff's employment effective immediately.
6 The basis for Plaintiff's termination was that she "violated
7 company policy", i.e., Plaintiff was employed by MWFB while
8 she was also employed as an independent claims adjuster for
9 Cunningham Lindsey.

10 12. On or about October 12, 2015, Defendant MWFB terminated
11 Plaintiff's employment effective immediately. The bases for
12 Plaintiff's termination were that she did not follow MWFB's
13 personnel policy and ethics regarding employment with other
14 employers, and that Plaintiff's employment as an
15 "independent adjuster and representing other insurance
16 carrier's [sic] is a conflict of interest and against the
17 company code of ethics."

18 13. Defendant MWFB is not a competitor of Defendant Cunningham
19 Lindsey nor is Cunningham Lindsey of MWFB.

20 14. Plaintiff did not adjust claims against MWFB's insured for
21 Cunningham Lindsey nor against Cunningham Lindsey's clients
22 for MWFB.

23 15. Plaintiff exhausted Defendants' grievance procedures.
24 Plaintiff's employment was not reinstated by either
25 Defendant.

26 //

27 //

28 //

COUNT I

Wrongful Discharge from Employment

3 16. Plaintiff realleges the foregoing paragraphs under this
4 count verbatim.

5 17. Plaintiff was not a probationary employee.

6 18. Defendants terminated Plaintiff's employment under mistaken
7 interpretation of fact;

8 19. Defendants' termination of Plaintiff's employment was a
9 pretext for an illegitimate reason;

10 20. Defendants' termination of Plaintiff's employment was
11 invalid as a matter of law;

12 21. Defendants discharged Plaintiff without good cause.

13 22. Plaintiff was injured by Defendants' wrongful termination.

14 23. Defendants' wrongful discharge is the actual and proximate
15 cause of Plaintiff's injuries.

16 24. Plaintiff is entitled to lost wages, including bonuses,
17 fringe benefits, and interest in an amount to be determined
18 at trial.

COUNT II

Blacklisting

21 25. Plaintiff realleges the foregoing paragraphs under this
22 count verbatim.

23 26. Defendants prevented or attempted to prevent employment of
24 Plaintiff by prospective employers by making false
25 representations about Plaintiff.

26 27. Defendants attempted, or authorized or allowed its agents to
27 blacklist Plaintiff, to prevent Plaintiff from obtaining
28 employment with prospective employers.

1 28. Plaintiff was injured by Defendants' blacklisting.
2 29. Defendants' blacklisting of Plaintiff is the actual and
3 proximate cause of Plaintiff's injuries.
4 30. Plaintiff is entitled to damages, including, without
5 limitation, punitive damages, and interest in an amount to
6 be determined at trial.

7 **COUNT III**

8 **Exemplary Damages**

9 31. Plaintiff realleges the foregoing paragraphs as though set
10 forth under this count verbatim.
11 32. Defendants prevented or attempted to prevent employment of
12 Plaintiff by prospective employers by making false
13 representations about Plaintiff.
14 33. On or about June 17, 2015, pursuant to Defendant MWFB
15 personnel policies, Plaintiff complained to MWFB that its
16 insurance agents were making false statements about
17 Plaintiff's job performance because Plaintiff would not
18 approve an insured's hail damage claim. Instead of taking
19 corrective action, MWFB terminated Plaintiff's employment.
20 34. Defendants terminated Plaintiff's employment without good
21 cause.
22 35. Defendants were aware that they had violated their policies,
23 and/or state or federal employment laws when they discharged
24 Plaintiff or intentionally disregarded these facts when they
25 discharged Plaintiff.
26 36. Defendants deliberately terminated Plaintiff's employment in
27 conscious or intentional disregard of the high probability
28 of injury to Plaintiff, or deliberately discharged Plaintiff

1 with indifference to the high probability of injury to her.

2 37. Defendants committed actual malice when it terminated
3 Plaintiff.

4 38. Plaintiff was injured by Defendants' actual malice.

5 Defendants' malice is the actual and proximate cause of
6 Plaintiff's injuries.

7 39. Plaintiff is entitled to punitive damages in an amount to be
8 determined at trial.

9 **COUNT IV**

10 **Equal Protection and Due Process**

11 40. Plaintiff realleges the foregoing paragraphs as though set
12 forth under this count verbatim.

13 41. The Equal Protection Clause of the Fourteenth Amendment
14 mandates that government shall not deny to any person within
15 its jurisdiction equal protection of the laws. U.S. Const.
16 Amend. XIV; Mont. Const., Art. II, Section 4.

17 42. Article II, Section 3, Mont. Const., bestows upon the
18 citizens of this state inalienable rights to pursue life's
19 basic necessities, enjoy and defend their lives and
20 liberties, acquire, possess and protect property, and seek
21 their safety, health and happiness in all lawful ways.

22 Article II, Section 26, Mont. Const., guarantees the right
23 to trial by jury.

24 43. Courts shall be open to every person, and speedy remedy
25 afforded for every injury of person, property, or character.
26 Mont. Const., Art. II, Sect. 16. Right and justice shall be
27 administered without sale, denial, or delay. *Id.*

28 //

1 44. Section 39-2-915, M.C.A., provides that a party may offer to
2 arbitrate and, if the other party rejects the offer, the
3 offering party shall be awarded attorney fees as costs if
4 the offering party prevails at trial, but that the rejecting
5 party is not entitled to an award of attorney fees if the
6 rejecting party prevails at trial.

7 45. Section 39-2-915, M.C.A., has a discriminatory impact in
8 that it rewards an offering party but punishes a rejecting
9 party by not affording attorney fees to the rejecting party
10 even if the rejecting party prevails at trial. It also has
11 a discriminatory impact in that Plaintiff, by her wrongful
12 discharge claim, is treated dissimilar to other litigants by
13 discouraging the exercise of her inalienable rights,
14 chilling her unfettered right to a trial by jury, and
15 closing the courthouse doors to speedy remedy without sale,
16 denial, or delay.

17 46. It is against the public policy and laws of this state to
18 grant one party the right to attorney fees, but not the
19 other; violates Plaintiff's right to contract; imposes a
20 term by which Plaintiff neither knowingly nor voluntarily
21 agreed to; and imposes costs upon Plaintiff, e.g.,
22 arbitrator fees, that are not imposed on every other citizen
23 bringing suit.

24 47. Section 39-2-915, M.C.A., is not related to a legitimate
25 government purpose, is an arbitrary and discriminatory
26 treatment of Plaintiff, and wholly irrelevant to the
27 achievement of the legislature's objective.

28 //

1 48. Because § 39-2-915, M.C.A., is not related to a legitimate
2 government purpose and is arbitrary and discriminatory, it
3 violates Plaintiff's equal protection and due process
4 rights.

5 49. Section 39-2-915, M.C.A., is unconstitutional and should not
6 be enforced.

7 **DEMAND FOR JURY**

8 Plaintiff requests trial by jury of her peers.

9 **WHEREFORE**, Plaintiff prays for relief against Defendants as
10 follows:

11 1. That Plaintiff be awarded lost wages, fringe benefits, and
12 interest against Defendants for wrongful termination of
13 Plaintiff's employment;

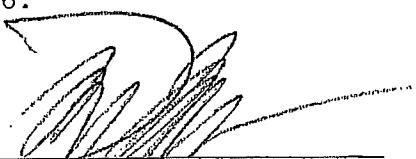
14 2. That Plaintiff be awarded punitive damages against
15 Defendants for blacklisting Plaintiff and for maliciously
16 terminating her employment;

17 3. That Plaintiff be awarded attorney fees, costs of suit, and
18 interest to the extent allowed by law;

19 4. That § 39-2-915, M.C.A., be held unconstitutional; and

20 5. That, in addition, for such other equitable and legal
21 relief.

22 DATED this 4 day of October, 2016.

23 
24 Thomas Karen,
25 Attorney for Plaintiff